
(1979) 04 KL CK 0006

In the High Court Of Kerala

Case No : T.R.C. No's. 12, 27 and 75 of 1978

Madras Rubber Factory Ltd.

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 04-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1979) 44 STC 208

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;V. Balakrishna Eradi, J;George Vadakkal, J

Bench : Full Bench

Advocate : S.A. Nagendran and N.N.D. Pillai, for the Appellant; Adv.-General, for the Respondent

Judgement

V.P. Gopalan Nambiyar, C.J.—These tax revision cases have been referred to a Full Bench to consider the correctness of the Division Bench ruling of this Court in O. Kassim Kannu Vs. State of Kerala, particularly, in view of the later Division Bench ruling in C.C. Transport Company Vs. The State of Kerala, The question involved is regarding the scope of the revisional jurisdiction under the Sales Tax Act and, whether, in exercising the same, it is open to the revisional authority to trench upon the power and jurisdiction of getting at the escaped turnover and bringing the same to tax "or" assessment.

2. T.R.C. No. 12 of 1978.--M/s. Madras Rubber Factory Limited, Kottayam, is the petitioner in this tax revision. The factory has its headquarters in Madras and its purchase depots in Kottayam and Calicut. The assessment year concerned is 1970-71. Rubber is taxable at the last purchase point. Rubber is locally purchased from Kerala State and sold in Madras. The goods are despatched to the Madras factory along with N forms under Rule 43(B) of the Rubber Rules. These forms have been recognised by the proviso to Rule 35, Clause (13), Sub-clause (b), of the Sales Tax Rules as sufficient to operate as a delivery note for the purposes of Sub-section (2) of Section 29 of the Act. The Sales Tax Officer

did not tax these transactions, as he took the view that they constituted transactions of inter-State sale not liable to be taxed under the local sales tax legislation, having regard to Section 5A of the Act, which reads as follows:

5A. Levy of purchase tax.--(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable u/s 5, and either--

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for that year at the rates mentioned in Section 5.

(2) Notwithstanding anything contained in Sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods, the sale of which is liable to tax u/s 5, shall not be liable to pay tax under Sub-section (1) if his total turnover for a year is less than twenty thousand rupees:

Provided that where the total turnover of such dealer for the year in respect of the goods mentioned in Clause (i) of Sub-section (1) of Section 5 is not less than two thousand five hundred rupees, he shall be liable to pay tax on the taxable turnover in respect of those goods.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a dealer referred to in Sub-section (1), who purchases goods, the sale of which is liable to tax under Clause (ii) of Sub-section (1) of Section 5, and whose total turnover for a year is not less than twenty thousand rupees but not more than twenty-five thousand rupees may, at his option, instead of paying the tax in accordance with the provisions of Sub-section (1), pay tax at the rate mentioned in Clause (i) of Sub-section (1) of Section 7 in accordance with the provisions of that section.

The Deputy Commissioner issued notice dated 14th July, 1976, to show cause why the revisional powers u/s 35 of the Saks Tax Act should not be exercised to set aside the order of the Sales Tax Officer. This was objected to by the assessee by his objections dated 22nd July, 1976. The Deputy Commissioner, by his order dated 26th July, 1976, set aside the order of the Sales Tax Officer and remanded the case to the assessing authority for fresh disposal. On appeal, the Sales Tax Appellate Tribunal confirmed the order of the Deputy Commissioner. In remanding the case, the Sales Tax Appellate Tribunal, followed a Division Bench ruling of this Court in C.C. Transport Company Vs. The State of Kerala, . That

decision, in effect, held that the power of the assessing authority u/s 19 to assess an escaped turnover is distinct and different from the revisional power of the Deputy Commissioner u/s 35 of the Act. The Tribunal, however, held that, as the Deputy Commissioner had wrongly refused the assessee's prayer for further time before proceeding to assess the escaped income, it was necessary to direct the Deputy Commissioner to dispose of the case after affording the assessee a reasonable opportunity to produce all the records and of being heard on his objection.

2. Counsel for the assessee contended that the revisional power u/s 35 of the Act cannot be exercised for the purposes of getting at escaped income for which the remedy is provided by Section 19 of the Act; and that, in exercising the power u/s 35, it would not be permissible to trench upon the power provided u/s 19 of the Act. It was contended that this position has been well-recognised and well-settled by judicial decisions. Before examining these decisions, we shall extract the relevant sections of the Sales Tax Act, 1963:

19. Assessment of escaped turnover.--(1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable, or any deduction has been wrongly made therefrom, the assessing authority may, at any time within four years from the expiry of the year to which the tax relates, proceed to determine to the best of its judgment the turnover which has escaped assessment to tax or has been underassessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction that has been wrongly made and assess the tax payable on such turnover after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

(2) In making an assessment under Sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful nondisclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under Sub-section (1), a penalty as provided in Section 45A:

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation.--Notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proving that the escape from assessment was not due to wilful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(3) The powers under Sub-section (1) may be exercised by the assessing authority even though the original order of assessment, if any, passed in the matter, has been the subject-matter of an appeal or revision.

(4) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the order of a civil court or other competent authority shall be excluded.

35. Powers of revision of the Deputy Commissioner suo motu.--(1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by the Inspecting Assistant Commissioner or any officer or authority of rank below that of an Inspecting Assistant Commissioner and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under Sub-section (1) if--

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

It would be useful to compare these provisions with the corresponding provisions of the General Sales Tax Act, 1125, with respect to which some of the decisions were rendered. Revisional jurisdiction was provided for by Section 15(1), which reads as follows:

15. (1) The Deputy Commissioner may--

(i) suo motu, or

(ii) on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit:

Provided that the Deputy Commissioner shall not revise any order or proceeding under this sub-section if--

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired; or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

Clauses (3), (4) and (5) of Section 15 are as follows:

(3) In relation to an order of assessment passed under this Act, the power of the Deputy Commissioner under Clause (i) of Sub-section (1) and that of the Board of Revenue under Clause (i) of Sub-section (2) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee.

(4) Every application under Sub-section (1)(ii) or (2)(ii) shall be preferred within sixty days from the date on which the order or proceeding to which the application relates was communicated to the applicant:

Provided that the authority concerned may admit an application preferred after the period of sixty days aforesaid, if the authority is satisfied that the applicant had sufficient cause for not preferring the application within that period.

(5) No order shall be passed under Sub-section (1) or (2) enhancing any assessment, unless an opportunity has been given to the assessee to show cause against the proposed enhancement.

Rule 33 provided for assessing escaped turnover. The relevant parts of the rule are as follows:

33. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions of Sub-rule (2) may at any time within three years next succeeding that to which the tax or licence fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable or levy the licence fee in such turnover after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary....

(4) If for any reason any tax or licence fee has been assessed at too low a rate in any year, the assessing authority or the licensing authority, as the case may be, may, at any time within three years next succeeding that to which the tax or licence fee relates, revise the assessment or the licence fee after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(5) The powers conferred by Sub-rules (1) and (4) on the assessing authority or licensing authority may also be exercised by the appellate authority referred to in Section 14 or, as the case may be, by the revising authority referred to in Section 15, at anytime within a period of three years next succeeding that to which the tax or, as the case may be, the licence fee relates, provided that such authority shall give the dealer concerned a reasonable opportunity of being heard before passing orders under this sub-rule.

The rules quoted above are the result of certain amendments introduced in 1956. It was as a result of the amendment that Sub-clause (5) of Rule 33 was added giving the power of assessing escaped income to the revisional authority. The

scheme of the 1963 Act is different; under that Act, the power of assessing escaped income is conferred by Section 19 on the assessing authority; and the revisional power u/s 35 is to be exercised by the Deputy Commissioner, namely, a higher authority than the assessing authority.

3. In the face of these statutory provisions sketching the ambit of the respective powers and, as a matter of first impression, there appears to be no bar or inhibition against getting at escaped income in exercise of the revisional power, so long as the grounds for exercise of that power are made out, viz., that the order is vitiated by illegality, irregularity or impropriety. This is the view that has been taken in more than one decision of the Supreme Court and of this and other High Courts. We are of the opinion that the contrary view which is reflected in at least one of the Division Bench rulings of this Court and in some of the other decisions cannot be sustained.

4. As early as in *State of Orissa v. Debaki Debi* AIR 1964 the Supreme Court had occasion to define the scope of the revisional power. The statute there concerned was the Orissa Sales Tax Act, 1947. Section 12 of the Act provided for assessment of tax. In the first five sub-sections, the different modes in which assessment was to be made were indicated. Sub-section (7) provided for escaped assessment or under-assessment. In such a case, the Collector may call for a return within 36 months of the end of the period in question and may proceed to assess the amount of tax as indicated in Sub-section (5). Section 23(1) of the Act provided for an appeal and Section 23(3) of the Act provided for revisions. Section 23(3) of the Act read thus:

23. (3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Collector may upon application, or of his own motion, revise any order passed under this Act or the Rules thereunder by a person appointed u/s 3 to assist him and, subject as aforesaid, the Revenue Commissioner may, in like manner, revise any order passed by the Collector.

We may now quote the following observations of the Supreme Court in regard to the scope and amplitude of the two powers, namely, the power of assessing escaped income u/s 12(7) of the Act and the power of revision u/s 23(3). The court observed:

Though in all these cases the impugned orders were made by the Collector of Sales Tax in the purported exercise of powers of revision u/s 23(3), the petitioners in the several petitions claim that the orders were in substance made u/s 12(7) of the Act. The High Court was of the opinion that Section 12(7) includes also the order of assessment made by the revising authority u/s 23(3) and, in that view, held that the orders of assessment passed beyond thirty-six months from the end of the period in question were barred by limitation.

The first contention urged on behalf of the State of Orissa is that the High Court is wrong in holding that an order of assessment of the revising authority is necessarily one made u/s 12(7). The power of revision granted by Section 23(3)

is clearly a distinct and separate power from the power to assess after calling for a return in case of under-assessment or escaped assessment. The mere (1) The State of Orissa Vs. Dabaki Devi and Others, .

fact that in a particular case the revising authority has by a fresh order of assessment made the dealer liable for tax in respect of which he can be said to have been underassessed or to have escaped assessment does not make the two powers one and the same. We, therefore, find it difficult to agree with the High Court that Section 12(7) includes also the reassessment made by the revising authority u/s 23(3). (underlining ours)

The case clearly defines the range of operation of the two powers. In State of Kerala Vs. K.M. Charia Abdullah and Co., the Supreme Court had occasion to examine the scope of the revisional power u/s 12 of the Madras General Sales Tax Act, 1939, and the vires of Rule 14-A of the General Sales Tax (Assessment) Rules. Section 12(2) of the Act enabled the Deputy Commissioner to revise the orders passed by his subordinate officers by examining its legality, regularity or propriety. The question that fell for examination was whether in exercise of the revisional power, the revisional authority could travel outside the records of the case. In dealing with that question, the court observed thus:

The power to hold an enquiry to take additional evidence is a procedural power in aid of the exercise of the revisional jurisdiction and if the revisional jurisdiction is not restricted only to cases of arithmetical errors or as the Tribunal called it "arithmetical aspect", there is no reason to assume that the power under Rule 14-A to make such enquiry as the appellate or the revising authority considers it just to order or to make would be so restricted. But the power conferred by Rule 14-A by the use of the expression "making such enquiry as such appellate or revising authority considers necessary" must be read subject to the scheme of the Act. It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by Rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer. Similarly, the power to make a best judgment assessment is vested by Section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power. The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the inquiries in considering the legality or propriety of the orders passed by the subordinate officer, which the revising or the appellate authority may make, is about the correctness of the tax levied and if after perusing the record the authority is prima facie satisfied about the illegality or impropriety of the order or

about the irregularity of the proceeding, it may in passing its order direct an additional enquiry. Neither Section 12 nor Rule 14-A authorises the revising authority to enter generally upon enquiries which may properly be made by the assessing authorities and to reopen assessments.

It has to be noted that reference to the power of assessing escaped income was made only illustratively to define the limits of the revisional power and of travelling outside the record in exercise of the same.

5. In *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, the scope of the revisional power under the Bombay Sales Tax Act, 1946, fell to be examined. The Supreme Court referred to the *Cheria Abdulla's* case² and two other cases and observed:

In fact, when a revisional power is to be exercised, we think that the only limitations, to which that power is subject, are those indicated by this Court in the *State of Kerala Vs. K.M. Charia Abdullah and Co.*, These limitations are that the revising authority should not trench upon the powers which are expressly reserved by the Acts or by the Rules to other authorities and should not ignore the limitations inherent in the exercise of those powers. In the present case, the Deputy Commissioner, when seeking to exercise his revisional powers, is clearly not encroaching upon the powers reserved to other authorities. Under the Act of 1946, the first assessment is made by the Sales Tax Officer u/s 11. If information comes into his possession that any turnover in respect of sales or supplies of any goods chargeable to tax has escaped assessment in any year or has been under-assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, proceedings can be taken afresh u/s 11A. On the face of it, if a first assessment order is made u/s 11 and any turnover escapes assessment, the appropriate provision, under which action is to be taken for assessing that turnover to tax, is Section 11A. There is, however, no provision under which the power now sought to be exercised by the Deputy Commissioner in the case before us could have been exercised by any other authority. In this case, as we have indicated earlier, the first assessment of tax was made by the Sales Tax Officer, and the turnover now in question was assessed to tax by him. Having once assessed that turnover to tax, he could not initiate a fresh proceeding in respect of it u/s 11A. The assessment made by him was set aside in appeal by the Assistant Collector and it is this order of the Assistant Collector which is sought to be revised by the Deputy Commissioner. This is, therefore, not a case where the powers are being exercised for the purpose of assessing or reassessing an escaped turnover. The case is one where the revisional powers are sought to be exercised to correct what appears to be an incorrect order passed in appeal by the Assistant Collector, and, for such a purpose, proceedings could not possibly have been taken u/s 11A. In exercising his revisional powers, therefore, the Deputy Commissioner is not encroaching upon the jurisdiction of any other authority specially entrusted with taking such proceedings.

The observations highlight the distinct spheres in which the two powers operate--

the power to assess escaped turnover and the revisional power.

6. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, the Supreme Court was again concerned with the scope of the Deputy Commissioner's revisional power u/s 15 of the Kerala General Sales Tax Act, 1125. It was observed that the power u/s 15(1) of the General Sales Tax Act, 1125, is quite distinct and separate from the power under Rule 33 to assess the escaped turnover. It was remarked, following the decision in *State of Kerala Vs. Shri M. Appukutty*, that the Deputy Commissioner, while exercising his revisional jurisdiction u/s 15(1) of the Act, would be restricted to the examination of the record to determine whether the order of assessment was according to law. But Rule 33 confers power to assess escaped turnover which may normally be exercised on matters de hors the record of assessment proceedings. (We may observe that the earlier observation that the revisional jurisdiction is confined to the examination of the record may not stand scrutiny in the light of the decision in the *Cheria Abdulla's case*.) The following observations of the court are pertinent:

Section 15(1) is meant for interference when there is some illegality or impropriety or irregularity in the order of the assessing authority which has to be set right. It can hardly be said to cover those cases in which the turnover has escaped assessment. As has been observed in *State of Kerala v. M. Appukutty*¹, in which similar provisions relating to the Madras General Sales Tax Act came up for consideration, the Deputy Commissioner, while exercising revisional jurisdiction, would be restricted to the examination of the record for determining whether the order of assessment was according to law. The rule which confers power to assess escaped turnover is normally to be exercised "on matters de hors the record of assessment proceedings" before the assessing authority. It has been pointed out that, although the substantive provisions of the Act do not expressly deal with the power and procedure for assessment of escaped turnover, the legislature has left it to be dealt with by statutory rules. In our judgment, the present case is covered by the previous decision of this Court.

In *State of Kerala Vs. K.E. Nainan*, no question of escaped assessment really arose. The question which arose was one regarding the correctness of an exemption of turnover granted in making the assessment. It was held that the correctness of the exemption could certainly be canvassed in exercise of the revisional jurisdiction u/s 15(1) of the 1125 Act and that it would not be correct to say that the case was really one for escaped assessment under Rule 33.

7. In *THVL. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu*, the Supreme Court expounded the scope of the revisional power u/s 32 of the Tamil Nadu General Sales Tax Act, 1959. The power was couched in similar terms as Section 35 of the Kerala General Sales Tax Act, 1963. It was observed by the Supreme Court that the power is quite wide, and could, subject to the conditions laid down in the section, be exercised even at the instance of an assessee, who did not file any appeal against the order. The court noticed the decisions in the

State of Kerala Vs. K.M. Charia Abdullah and Co., and the Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, and observed:

In view of the above, we are of the opinion that the suo motu power of revision of the Deputy Commissioner is of wide amplitude and can be exercised in favour of the revenue as well as the taxpayer in order to correct any error or illegality committed by the assessing authority in his order of assessment.

In S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others, the Supreme Court considered the revisional power under the Bengal Finance (Sales Tax) Act, 1941. The principal point that was canvassed was that, in exercising the revisional power, the revisional authority is fettered by a period of limitation which is provided for in some of the other sections of the Act. The argument was repelled. The court observed:

It was pointed out by this Court in the Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, that the Deputy Commissioner when seeking to exercise his revisional powers was not encroaching upon the powers reserved to other authorities. The powers were not exercised for the purpose of assessing or reassessing an escaped turnover. The revisional powers were sought to be exercised to correct what appeared to be an incorrect order passed by an Assistant Collector and for such a purpose proceedings could not possibly have been taken u/s 11-A. In the instant case also, it could not be disputed that the view taken by the Assistant Commissioner in appeal was obviously wrong. The Commissioner while correcting that mistake in exercise of his revisional power was not doing anything which the Sales Tax Officer was empowered to do u/s 11-A. He was merely setting right the illegality in the appellate order.

8. In Ram Kanai Jamini Ranjan Pal Pvt. Ltd. Vs. Member, Board of Revenue, W. Bengal, the Supreme Court again had occasion to examine the scope of the revisional power u/s 20(3) of the Bengal Finance (Sales Tax) Act. That section was worded more or less in the same language as Section 35 of our Act. The court observed thus: "The section as extracted above is very widely worded. The word "revise" occurring therein, which, in dictionary, is described as meaning to "re-examine, to review, to correct, or to amend the fault" is not hedged or qualified by any condition or limitation. The controlling expressions like "for the purpose of satisfying himself as to the legality or propriety of the order passed" or "regularity of the proceeding", which are susceptible of being construed as restricting the revisional power to rectification of an illegality or impropriety of the order or of irregularity in the proceeding are also not to be found therein. There is also nothing in the Bengal Sales Tax Rules, 1941 (hereinafter called "the Rules"), to circumscribe or limit the power. It is not, therefore, unreasonable to infer that the amplitude of the power conferred on the Commissioner or the Additional Commissioner is more extensive than the power exercisable by the High Court u/s 115 of the Code of Civil Procedure. In fact, it can be easily equated with the power exercisable by the appellate authority in an appeal under

Sub-section (2) of Section 20 of the Act. We are fortified in this view by the following observations made by this Court in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, .:

Section 27 is very wide in its terms and it cannot be construed as being subject to any limitation such as filing of an appeal. Nor can the scope of revisional powers be confined only to matters of jurisdiction or illegality, because u/s 27 the Custodian-General can exercise revisional powers for the purpose of satisfying himself as to "the legality or propriety" of any order of the custodian.

The following observations made by Ramaswami, J., in *East Asiatic Co. (India) Ltd. v. State of Madras* [1956] 7 S.T.C. 299 (mad) are also relevant:

The purposes of this Act are twofold, viz., the levy of a general tax on the sale of goods to supplement the lost revenues and for promoting the general public good; and, secondly, to see that this is done under the provisions of the Act and not by carrying out in a capricious or arbitrary manner. Therefore, a revisional authority has to be created. What is revision? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act, etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such an amplitude being given suo motu revisions appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities above-mentioned.

Thus the Commissioner or the Additional Commissioner can, in exercise of his revisional power, reassess the turnover and while doing so rope in escaped items of turnover and thereby enhance the gross turnover.

9. We have surveyed the relevant decisions of the Supreme Court, all of which have, in our view, neatly focused the revisional power in its proper perspective. We may now refer to the observations of a Division Bench of the Mysore High Court in *Rallis India Limited v. State of Mysore* [1965] 16 S.T.C. 130. Hegde, J., of that court (as he then was) observed thus:

Section 15 of the Act does not confer on the Commissioner any power to tax escaped turnover. It merely empowers him to revise any order made by any of his subordinates and correct any errors therein. Escaped turnovers have to be

dealt with under Rule 32 of the Rules framed and the authority who can act under that rule is the assessing authority, in the instant case, the Commercial Tax Officer. Our attention has not been drawn to any provision of law under which the Commissioner could exercise that power. The power to tax an escaped turnover is an independent jurisdiction. It is an original jurisdiction and not a revisional jurisdiction. It is true that in certain respects the revisional jurisdiction of the Commissioner overlaps the original jurisdiction of the assessing authority under Rule 32, e.g., a turnover which is included in the assessee's return but left un-assessed by oversight or on an erroneous view of the law. Such an error can be rectified either by the assessing authority by having recourse to Rule 32 or by the revisional authority u/s 15.

10. We were, however, pressed with the decision of the Supreme Court in the State of Kerala Vs. Shri M. Appukutty, and, in particular, with the decision of the Division Bench of this Court in O. Kassim Kannu Vs. State of Kerala, We shall turn to these decisions. The Supreme Court, in the Appukutty's case², was concerned with the provisions of Rule 17 of the Madras General Sales Tax Rules, 1939, and the various clauses thereof, enacted under the rule-making powers conferred by Section 19 of the Madras General Sales Tax Act, 1939. Section 9 provided for submission of returns by the assessee and, in case, no return is submitted by the assessee, the assessing authority shall assess the assessee to the best of his judgment. The grounds on which revisional power u/s 12(2) could be exercised were illegality, irregularity and impropriety. Rule 17(1) deals with the assessment of escaped turnover by the assessing authority or the licensing authority. Rule 17(3-A) confers the power of assessing escaped turnover on the appellate and the revisional authorities, subject to the limitation that it had to be exercised within three years next succeeding that to which the tax relates. The court observed:

The respondent's argument was, and that argument was accepted by the High Court, that this provision contains the totality of the powers of the Deputy Commissioner and the power to assess escaped turnover is merely incidental to the power of revision and may be exercised only when revisional jurisdiction u/s 12(2) is invoked under that section and the record is sent for suo motu or on application and the legality or propriety of the order made by the subordinate officer is scrutinised. Therefore, the Deputy Commissioner was not in the absence of any substantive proceeding for exercise of revisional powers competent to assess escaped turnover. But the power to assess escaped turnover does not arise out of the revisional jurisdiction. In exercising revisional jurisdiction the Deputy Commissioner would be restricted to the examination of the record for determining whether the order of assessment was according to law. Rule 17 confers power to assess escaped turnover which may normally be exercised on matters de hors the record of assessment proceedings before the Deputy Commercial Tax Officer.

11. Strictly, no question of the exercise of the revisional jurisdiction trenching

upon the power of assessing escaped turnover arose for consideration in the above case. The decision was really concerned with the question whether in exercising the revisional power, the authority was confined to the examination of the record or could travel outside the record. Actually, the decision in the State of Kerala Vs. Shri M. Appukutty, that the revisional authority was confined to the record cannot be supported in the light of the pronouncement of the larger Bench in the State of Kerala Vs. K.M. Charia Abdullah and Co., followed in the Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, and the THVL. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu, .

12. Turning then to the decision of the Division Bench of this Court in Kassim Kannu v. State of Kerala [1970] 26 S.T.C. 530 that decision laid down that the revisional power of the Deputy Commissioner, including the power of further investigation, u/s 35 of the Kerala General Sales Tax Act is to be used only to correct the illegality, irregularity or impropriety of the order sought to be revised and is not to be used in another field of jurisdiction, namely, the jurisdiction of the Sales Tax Officer to assess escaped turnover u/s 19 of the Act.

The Division Bench thought that the pronouncements of the Supreme Court in the State of Kerala Vs. Shri M. Appukutty, the State of Kerala Vs. K.M. Charia Abdullah and Co., the Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, the Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and the State of Kerala Vs. K.E. Nainan, all supported the proposition laid down by it. The position was stated thus:

On a consideration of these five decisions of the Supreme Court, what emerges on the question before us is that the revisional power of the Deputy Commissioner is a separate and distinct power; an independent jurisdiction; and that the two powers operate in two fields, so that they cannot overlap and the revisional power of the Deputy Commissioner cannot trench upon the power of the Sales Tax Officer to assess escaped turnover. If it does, it oversteps its field and is thus beyond the Deputy Commissioner's jurisdiction.

13. We think that the Division Bench misunderstood the scope and effect of the five decisions of the Supreme Court referred to by it. We have surveyed each one of these decisions and highlighted the principles in each of them. We cannot accept the pronouncement of the Division Bench as correct.

14. On the other hand, we think the correct principle, on this aspect, was laid down by a recent Division Bench decision of this Court in C.C. Transport Company Vs. The State of Kerala, The question that there arose was directly with reference to the provisions of Section 19 and Section 35 of the 1963 Act. The Division Bench observed:

While the revisional power is restricted to the examination of the records for determining whether the order of assessment was according to law, the power to assess escaped turnover can be exercised in matters de hors the record of

assessment proceedings. These two sections therefore relate to different jurisdictions and different matters. A valid order under the one is not an infringement of the power under the other: see *State of Kerala Vs. Shri M. Appukutty, Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and SMT. LUCY KOCHUVAREED Vs. COMMISSIONER OF AGRICULTURAL Income Tax, TRIVANDRUM., .*

The above statement of the law is correct in so far as it laid down that a valid exercise of the revisional power is not an infringement of the power of assessing escaped turnover; it requires qualification in so far as it stated that the revisional power is restricted to the examination of the records: vide the decisions in the *Cheria Abdulla's case**2* and the *Swastik Oil Mills" case3* and the *THVL. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu,*

15. We may notice the dissenting judgment of Raman Nair, C.J., in *SMT. LUCY KOCHUVAREED Vs. COMMISSIONER OF AGRICULTURAL Income Tax, TRIVANDRUM., .* The majority judgment therein was reversed by the Supreme Court in *Commissioner of Agricultural Income Tax, Trivandrum Vs. Lucy Kochuvareed, Raman Nair, C.J.,* observed:

Left to my own resources, uninfluenced by the authorities, I would have been disposed to say this. Every case of income escaping assessment--and in the light of the decision of the Supreme Court in *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, ,* I concede that the present case is such a case--is necessarily a case of error in the original assessment, whether this be due to the assessing authority, namely, the Income Tax Officer, not having all the materials before him or to his reaching a wrong conclusion on the materials. This error in the assessment proceeding, Section 34 authorises the Commissioner to correct (of course, only after giving the assessee a reasonable opportunity of being heard), without any limitation as to time and after making such enquiry as he thinks fit which means that he can gather fresh material and is not confined to the record of the proceeding. He may, subject to the provisions of the Act, pass such orders as he thinks fit which I should have thought means that he may do what the Income Tax Officer ought to have done in making the original assessment, namely, make an assessment in accordance with the provisions of the Act, taking the escaped income also into account. Or, he may ask the Income Tax Officer to do so. In so doing, it is the original order of assessment he is revising, not the exercise or non-exercise by the Income Tax Officer of his power to correct his own order of assessment u/s 35. The Commissioner is in no sense exercising the powers of the Income Tax Officer u/s 35, but only that officer's power to make the original assessment. That being so, it is difficult to understand how the Commissioner's power of revision can be affected by the limitations imposed by Section 35, any more than the powers of an appellate or revisional court are affected by any limitation that might be placed on the powers of the court of first instance to review its own decisions. But, if the Commissioner directs the Income Tax Officer to rope in the escaped income, the latter can do

that only u/s 35 and subject to the limitations imposed by that section. That, it seems to me, was all that was decided by the Privy Council in *Commissioner of Income Tax v. Khemchand Ramdas* [1938] 6 ITR 414 (P.C.).

The learned Chief Justice then referred to the formidable array of authorities and was prepared to hold that, acting u/s 34, the Commissioner has no power to assess escaped income himself and can only direct the Income Tax Officer to do so in exercise of the latter's powers u/s 35 of the Act (the case arose under the provisions of the Agricultural Income Tax Act). The correctness of this limitation on the Commissioner's revisional power does not actually fall for consideration before us. The Deputy Commissioner in this case has only remanded the proceedings to the Sales Tax Officer for fresh consideration.

16. As the authorities were fully surveyed before us, we may refer to the decision in *P.K. Hasheeb & Co. v. State of Madras* [1966] 17 S.T.C. 38. The Division Bench of the Madras High Court surveyed the position with respect to the provisions of Sections 32 and 16 of the Madras General Sales Tax Act, 1959--the former conferring the right of revision on the Deputy Commissioner and the latter conferring the power of correcting the assessment on the assessing authority itself. The latter power is the power of assessing escaped turnover. After noticing the scope of the powers, with respect to the relevant provisions of the Act, the learned Judges stated:

We are of the opinion that under the present scheme of the Act, in which the entire machinery for assessment regarding the jurisdiction and powers of the original assessing authority as well as the appellate or the revisional authority have been incorporated in the Act itself, the question has to be decided upon the plain terms of the corresponding sections. It should be noticed that even under the old Act of 1939, by G.O. No. 193 dated 28th January, 1954, Sub-rule (3A) was added to Rule 17 to the effect that powers conferred under Sub-rules (1) and (3) of Rule 17 upon the assessing authority or the licensing authority may also be exercised by the appellate authority or by the revising authority within a period of five years next succeeding that to which the tax relates. This amendment makes the position clear that the legislature did not visualise a clear-cut, well-defined, mutually exclusive jurisdiction of the assessing authority as against the revisional authority, each being restricted to operate in its own field without any overlapping.

At the end of the discussion, the Division Bench concluded:

We are, therefore, of the opinion that the power of revision can be exercised by the Deputy Commissioner u/s 32 to correct errors committed by the assessing authority in his order of assessment, irrespective of the question as to whether the said errors could also be corrected by the assessing authority himself. The power u/s 32 is a distinct separate power and its exercise cannot be controlled by any power which may inhere in the assessing authority u/s 16.

A similar view has been taken by the Bombay High Court in *Babulal & Sons v.*

Assistant Commissioner of Sales Tax [1978] 41 S.T.C. 89 . We think, on a conspectus of the provisions and the purpose and scope of the powers, that the position as explained by us is clear enough. We may record that the decisions taking a contrary view were also brought to our notice; one of them was the decision in *A. Velayutha Raja, Raja Engineering Co., Madurai Vs. Board of Revenue (CT), Madras*, .

17. We began the discussion of the question by recording our first impression on the statutory provision. The power of assessing escaped turnover and of revision are two distinct and separate powers. They have been conferred on two different authorities under Sections 19 and 35, the latter power being conferred on a superior authority. An examination of the authorities has only confirmed our first impression.

18. The order of the Sales Tax Appellate Tribunal was correct. We affirm the judgment of the Tribunal and dismiss the revision with no order as to costs.

T.R.C. No. 27 of 1978.--The assessment year with which we are concerned in this revision is 1971-72. The assessment order is dated 4th July, 1973. The Sales Tax Officer treated certain goods as liable to be taxed at the general and residuary rate of 3 per cent. The goods concerned were earthen pipes and top brackets supplied to the Kerala State Electricity Board. In exercising his revisional power u/s 35 of the Act, the Deputy Commissioner, by his order dated 30th June, 1977, directed the Sales Tax Officer to dispose of the matter afresh on the ground that the goods were wrongly categorised at the general or residuary rate and had to be assessed as specific goods at the higher rate of 7 per cent. The Deputy Commissioner's power in exercising the revisional jurisdiction to pass the impugned order was questioned for the same reasons as in T.R.C. No. 12 of 1978. For the reasons stated, while dealing with the said revision, the Deputy Commissioner had power and jurisdiction to direct the Sales Tax Officer to examine the matter afresh, the Tribunal was right in sustaining the said order. We dismiss this revision with no order as to costs.

T.R.C. No. 75 of 1978.--In this tax revision, subsequent to the assessment order, there was a search by the Intelligence Officer, which disclosed that turnover from certain transactions had not been assessed. The Deputy Commissioner cancelled the assessment and directed the Sales Tax Officer to make a fresh assessment after taking into consideration the transactions and turnover disclosed on search by the Intelligence Officer.

2. The power exercised by the revisional authority was strictly within the scope of Section 35 of the Act. No question of trenching upon the assessment of escaped turnover arises in this tax revision. The Sales Tax Appellate Tribunal was right in affirming the order of the Deputy Commissioner and sustaining his power. We dismiss this tax revision with no order as to costs.

We have heard the counsel.

These cases were posted for "being spoken to" today, as the learned Government Pleader submitted that, in the light of the reasoning and the conclusion in T.R.C. No. 12 of 1978, the other two tax revision cases preferred by the State have to be allowed. This submission is correct.

We allow T.R.C. Nos. 27 and 75 of 1978 and set aside the orders of the Tribunal.